

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENTS ON BEHALF OF STUDENT,

OAH CASE NO. 2010090006

v.

SAN MIGUEL JOINT UNION SCHOOL
DISTRICT,

PARENTS ON BEHALF OF STUDENT,

OAH CASE NO. 2010100993

v.

SAN LUIS OBISPO COUNTY SELPA.

ORDER GRANTING MOTIONS TO
CONSOLIDATE AND CONTINUE
CASES, AND SETTING NEW DATES

On August 30, 2010, Parents on behalf of Student (Student) filed a Request for Due Process Hearing (complaint), naming the San Miguel Joint Union School District (District). The matter was designated as Office of Administrative Hearings (OAH) Case No. 2010090006 (first case). This matter is set for a prehearing conference on November 10, 2010, and a hearing on November 15 through 18, 2010.

On October 20, 2010, Student filed a second complaint, naming Heartspring, an out-of-state nonpublic school (NPS). This matter was designated as OAH Case No. 2010100936 (second case). The second case was set for a prehearing conference on December 8, and a hearing on December 14, 2010. On November 1, 2010, Heartspring filed a motion to dismiss Case No. 2010100936 for lack of jurisdiction. On November 4, 2010, OAH granted Heartspring's motion and that case is dismissed.

On October 21, 2010, Student filed a third complaint, naming the San Luis Obispo County Special Education Local Plan Area (SLO SELPA) (third case). This matter was designated OAH Case No. 2010100993. The third case is set for a prehearing conference on December 8, 2010, and a hearing on December 16, 2010.

Also on November 1, 2010, Student filed a Motion to Consolidate all three cases , and to continue the due process hearing dates set in all cases to January 18 through 21, 2011. Student represents that both District and the SLO SELPA are in agreement with the motions. On November 2, 2010, Heartspring filed a response opposing consolidation. However, since

Student's case against Heartspring has been dismissed, its opposition to consolidation is moot.

APPLICABLE LAW AND DISCUSSION

Consolidation

OAH will generally consolidate matters that involve a common question of law and/or fact and that involve the same parties, and when consolidation of the matters furthers the interests of judicial economy and will obviate potentially inconsistent rulings. While no statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases, California statutes offer, by analogy, a standard appropriate to special education cases. Government Code section 11507.3, subdivision (a), provides that an administrative law judge "may" order pending administrative proceedings consolidated if they involve "a common question of law or fact" California Code of Civil Procedure section 1048, subdivision (a), applies the same standard to the consolidation of civil cases.

Student's complaints in his first case against the District, and his third case against the SLO SELPA generally involve common questions of law or fact. Both cases involve the same student and the same time period, placement, and individualized education programs. In addition, consolidation furthers the interests of judicial economy in that the matters in both cases will involve the same or similar witnesses and may reasonably be litigated in one hearing. District and the SLO SELPA have not filed any opposition to the motion. The cases shall therefore be consolidated.

Continuance

Education Code sections 56502, subdivision (f), and 56505, subdivision (f)(1)(C)(3), require that a hearing be conducted and a decision rendered within 45 days of receipt of the complaint unless an extension is granted. Speedy resolution of due process hearings is mandated by law and continuance of due process hearings may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(1)(C)(3).)

In addition, when consolidating cases, OAH designates the statutory timelines applicable to the consolidated matters to be controlled by one of the cases. Here, the statutory timelines shall be controlled by Student's third case, in which the law requires a mandatory 30-day resolution period, beginning on October 21, 2010.¹

¹ See 20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. §§ 300.510(a)(1) and (a)(3); Ed. Code § 56501.5.

Good cause has been established for a brief continuance of the consolidated matters in order to provide the parties with the statutory resolution period in Student's third case and to prepare for hearing, and a continuance is therefore granted. All currently scheduled dates are vacated. Student represents that the District and the SLO SELPA have agreed to specified hearing dates in January, 2011, which are ordered below.

ORDER

1. Student's motion to consolidate is granted, and Student's first and third cases, above-titled, are consolidated.

2. Student's motion to continue the prehearing conference and hearing dates in the first and third cases is granted. All dates previously set for proceedings in OAH Case No. 2010090006 and Case No. 2010100993 are vacated.

3. The 45-day timeline for issuance of the decision in the consolidated cases shall be based on the date of the filing of the complaint in the third case, OAH Case No. 2010100993.

4. OAH shall issue a new scheduling order in the consolidated cases, setting the matters for hearing for four days on January 18 through 21, 2011, with a prehearing conference on Wednesday, January 5, 2010, at 1:30 p.m.²

Dated: November 8, 2010

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

² The parties are encouraged to meet and confer to select a date to voluntarily mediate the consolidated matters, and to request that OAH schedule mediation.